



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/514,431	11/16/2004	Hiroataka Tohara	2004 1723A	1050

513 7590 06/09/2006

WENDEROTH, LIND & PONACK, L.L.P.  
2033 K STREET N. W.  
SUITE 800  
WASHINGTON, DC 20006-1021

EXAMINER
----------

BUNIN, ANDREW M

ART UNIT	PAPER NUMBER
----------	--------------

3743

DATE MAILED: 06/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/514,431

Applicant(s)

TOHARA, HIROTAKE

Examiner

Andrew M. Bunin

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 14,17-19,22 and 23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14,17-19,22 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 November 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Allowable Subject Matter***

The indicated allowability of claims 16-17 and 21-22 are withdrawn in view of the newly discovered reference(s) to Uematsu, Un, and Wilson. Rejections based on the newly cited reference(s) follow.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the round-shaped silicone rubber discs must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

Art Unit: 3743

Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The disclosure is objected to because of the following informalities: Examiner finds the element of a round-shaped silicone rubber disc as not being clearly described in the specification in relation to the entire nose mask. In addition, it is unclear whether the silicone rubber disc is a separate embodiment from the round-shaped filters or whether the filter and silicone rubber disc are equivalents to one another in the art. Applicant has stated that a rubber plate is used with the nose mask since it has no liquid permeability (paragraph 30, lines 1-5); therefore, it can be read as not being a filter.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 19, 22, and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims include a round-shaped silicone rubber disc, which is not clearly disclosed in the drawings and specification for proper examination. However, examiner has broadly interpreted the round-shaped silicone

rubber disc as reading on filter element 6 for purposes of further examination. However, Examiner notes that a filter material cannot be a silicone rubber disc that prevents the flow of fluid and alternatively a silicone rubber disc that is impermeable cannot be a filter for the nose mask. In addition, there is inconsistency between the specification and claim wherein applicant states that rubber plate is fitted on the tip of the arrangement axle by the cap (paragraph 30, lines 1-5). In contrast, claim 19 states that silicone rubber discs are arranged on opposite sides of the cellulose sponge

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

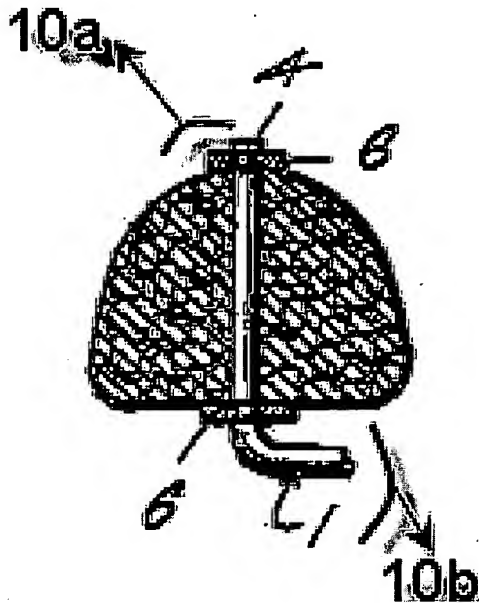
The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Uematsu (Japanese Utility Application No. 125767/1984) in view of Un (US 1322375). Uematsu discloses a nose mask comprising an arrangement axle (1) and a mask portion (including sections 2, 3, and 2a) removably mounted on the arrangement axle (1) can be inserted from nares into a nasal vestibule to attach the mask portion to a nasal cavity of a user (Figure 1). Uematsu continues to disclose a mask portions (sections 2, 3, and 2a) include a cellulose sponge (2) and a pair of round-shaped filters (3) arranged on opposed sides of the cellulose sponge (2), the round

Art Unit: 3743

shaped filters (3) are capable of filtering polluted air and collecting dust, and the cellulose sponge (2) is capable of absorbing and buffering liquid (Figure 1). In addition, Uematsu teaches the first and second round shaped filters (3) having a diameter that is larger than a diameter of the cellulose sponge (2) in order to wrap around the sponge as shown in Figure 1. Uematsu doesn't explicitly disclose a cap and stopper securing the mask portion to a portion of the arrangement axle. However, Un discloses a cap (6 at 4) and stopper (6) securing a mask portion (5) to a portion of an arrangement axle (1/2) by sandwiching the mask portion (5) between the cap (6 at 4) and stopper (6). Un continues to disclose a cap (6 at 4) that includes structure defining a central passage receiving the arrangement axle (1/2) and a first engagement portion (10a) engaging an engagement member of the arrangement axle (1/2) to secure the cap (6 at 4) on the arrangement axle, and a second engagement portion (10b) engaging an engagement member of the stopper (6) that is capable of sandwiching the filters and the cellulose sponge between the cap and the stopper. This arrangement is also capable of preventing the mask portion (5) from being disengaged from the arrangement axle (1/2) by a force applied transversely to a plane direction of the filters as shown in the Figure below. Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the device of Uematsu with the cap, stopper, and engagement portion of Un in order to retain the sponge and filters upon the arrangement axle.



Prior Art- US 1,322,375

In regards to claims 17 and 18, Uematsu discloses a structure (1a/1b) defining the central passage extends through the round shaped filters (3) and the cellulose sponge (2) (see Figure 2). Uematsu further teaches first and round shaped filters (3) are positioned to contact internal surfaces of a nasal vestibule when the mask portion (5) is inserted therein.

Claims 19, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Uematsu (Japanese Utility Application No. 125767/1984) in view of Un (US 1322375), and further in view of Wilson (US 22374954). Uematsu discloses a nose mask comprising an arrangement axle (1) and a mask portion (including sections 2, 3, and 2a) removably mounted on the arrangement axle (1) can be inserted from nares into a nasal vestibule to attach the mask portion to a nasal cavity of a user (Figure

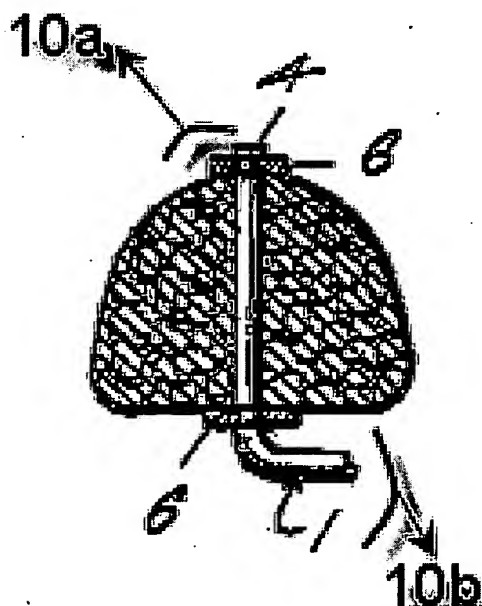
Art Unit: 3743

1). Uematsu continues to disclose a mask portions (sections 2, 3, and 2a) include a cellulose sponge (2) and a pair of round-shaped filters (3) arranged on opposed sides of the cellulose sponge (2), the round shaped filters (3) are capable of filtering polluted air and collecting dust, and the cellulose sponge (2) is capable of absorbing and buffering liquid (Figure 1). In addition, Uematsu teach the first and second round shaped filters (3) having a diameter that is larger than a diameter of the cylindrical cellulose sponge (2) in order to wrap around the sponge as shown in Figure 1. Uematsu doesn't explicitly disclose a cap and stopper securing the mask portion to a portion of the arrangement axle. However, Un discloses a cap (6 at 4) and stopper (6) securing a mask portion (5) to a portion of an arrangement axle (1/ 2) by sandwiching the mask portion (5) between the cap (6 at 4) and stopper (6). Un continues to disclose a cap (6 at 4) that includes structure defining a central passage receiving the arrangement axle (1/2) and a first engagement portion (10a) engaging an engagement member of the arrangement axle (1/2) to secure the cap (6 at 4) on the arrangement axle, and a second engagement portion (10b) engaging an engagement member of the stopper (6) that is capable of sandwiching the filters and the cellulose sponge between the cap and the stopper. This arrangement is also capable of preventing the mask portion (5) from being disengaged from the arrangement axle (1/2) by a force applied transversely to a plane direction of the filters as shown in the Figure below. Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the device of Uematsu with the cap, stopper, and engagement potion of Un in order to retain the sponge and filters upon the arrangement axle.



Art Unit: 3743

Lastly, Uematsu and Un disclose everything except the round-shaped silicone rubber discs. However, Wilson discloses a nose mask comprising a mask portion that includes cellulose sponge (column 1, lines 34-36) and round-shaped silicone rubber discs (11) arranged on opposite sides of the cellulose sponge (D), wherein the silicone rubber discs (11) are inherently water impermeable. In addition, the round-shaped silicone rubber discs (11) have a diameter that is larger than a diameter of the cylindrical cellulose sponge (D). Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the combination of Uematsu and Un by switching the filters of Uematsu with the silicone rubber discs of Wilson for retention within the nasal passages.



Prior Art- US 1,322,375

In regards to claims 22 and 23, Uematsu discloses a structure (1a/1b) defining the central passage extends through the round shaped filters (3) and the cellulose

Art Unit: 3743

sponge (2) (see Figure 2). Uematsu further teaches first and round shaped filters (3) are positioned to contact internal surfaces of a nasal vestibule when the mask portion (5) is inserted therein.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: US 5568808, FR 2504003, and FR 2417304

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew M. Bunin whose telephone number is (571)272-4801. The examiner can normally be reached on Monday - Friday, 8 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571)272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
AMB  
5/1206

  
Henry Bennett  
Supervisory Patent Examiner  
Group 3700